

**Small Claims  
Final Determination  
Findings and Conclusions**

**Petition:** 45-001-13-1-5-00294-16  
**Petitioner:** James Nowacki  
**Respondent:** Lake County Assessor  
**Parcel:** 45-08-32-429-016.000-001  
**Assessment Year:** 2013

The Indiana Board of Tax Review (“Board”) issues this determination, finding and concluding as follows:

**Procedural History**

1. Petitioner initiated this appeal with the Lake County Property Tax Assessment Board of Appeals (“PTABOA”). The PTABOA issued notice of its final determination on December 9, 2015. On January 26, 2016, Petitioner filed the Form 131 with the Board.
2. Petitioner elected to have the appeal heard under the Board’s small claims procedures. Respondent did not elect to have the appeal removed from those procedures.
3. Ellen Yuhan, the Administrative Law Judge (“ALJ”) appointed by the Board, held the administrative hearing on July 10, 2017. Neither the ALJ nor the Board inspected the property.
4. James Nowacki, Petitioner, was sworn and testified. Robert W. Metz and Joseph E. James, Lake County Hearing Officers, were sworn as witnesses for Respondent.

**Facts**

5. The subject property is a vacant residential lot located at 4926 Grant Street in Gary.
6. For 2013, the property was assessed at \$4,000.
7. Petitioner requested an assessed value of \$1,700.

**Record**

8. The official record contains the following:
  - a. A digital recording of the hearing,

b. Exhibits:

Respondent Exhibit 1:	Property record card (“PRC”) for the subject property,
Respondent Exhibit 2:	GIS map of parcel,
Respondent Exhibit 3:	List of comparable sales,
Board Exhibit A:	Form 131 petition and attachments,
Board Exhibit B:	Notice of hearing
Board Exhibit C:	Hearing sign-in sheet,

c. These Findings and Conclusions.

**Burden**

9. Generally, a taxpayer seeking review of an assessing official’s determination has the burden of proving that a property’s assessment is wrong and what the correct assessment should be. *See Meridian Towers East & West v. Washington Twp. Assessor*, 805 N.E.2d 465, 468 (Ind. Tax Ct. 2003); *see also Clark v. State Bd. of Tax Comm’rs*, 594 N.E.2d 1230 (Ind. Tax Ct. 1998). A burden-shifting statute creates two exceptions to that rule.
10. First, Ind. Code § 6-1.1-15-17.2 “applies to any review or appeal of an assessment under this chapter if the assessment that is the subject of the review or appeal is an increase of more than five percent (5%) over the assessment for the same property for the prior tax year.” Ind. Code § 6-1.1-15-17.2(a). “Under this section, the county assessor or township assessor making the assessment has the burden of proving that the assessment is correct in any review or appeal under this chapter and in any appeals taken to the Indiana board of tax review or to the Indiana tax court.” Ind. Code 6-1.1-15-17.2(b).
11. Second, Ind. Code 6-1.1-15-17.2(d) “applies to real property for which the gross assessed value of the real property was reduced by the assessing official or reviewing authority in an appeal conducted under Ind. Code § 6-1.1-15,” except where the property was valued using the income capitalization approach in the appeal. Under subsection (d), “if the gross assessed value of real property for an assessment date that follows the latest assessment date that was the subject of an appeal described in this subsection is increased above the gross assessed value of the real property for the latest assessment date covered by the appeal, regardless of the amount of the increase, the county assessor or township assessor (if any) making the assessment has the burden of proving that the assessment is correct.” Ind. Code § 6-1.1-15-17.2(d).
12. These provisions may not apply if there was a change in improvements, zoning, or use. Ind. Code § 6-1.1-15-17.2(c).

13. The assessed value did not increase from 2012 to 2013. Petitioner, therefore, has the burden of proof.

### Summary of Parties' Contentions

14. Petitioner's case:

- a. Petitioner contends the property is a platted lot on a "paper" street surrounded by other vacant lots. It is situated in a wooded area with no path, no improvements, and no utilities. *Nowacki testimony.*
- b. Petitioner contends that while there may be potential for development once various lots are combined, the property cannot be developed under present circumstances. Petitioner argues, however, that the over-assessment of the properties in the area makes it impractical for anyone to acquire the subject property and hold it long enough to develop it. *Nowacki testimony.*
- c. Petitioner contends the most viable market for these properties is tax sales. He contends that most of these properties eventually get turned over to the city because they cannot otherwise be sold. *Nowacki testimony.*
- d. Petitioner contends Respondent is attempting to create value where it does not exist. He contends that because the property is being assessed at a value greater than twice the amount it is actually worth, the overall actual value is being adversely affected due to the resulting high property taxes. He contends that such a practice amounts to Respondent's overall destruction of Gary property values. *Nowacki testimony.*
- e. Petitioner acknowledges the semi-annual property tax installment on the subject property is approximately \$68 and that he did not make a payment for the year at issue. *Nowacki testimony; Metz testimony.*

15. Respondent's case:

- a. Respondent contends that, although Petitioner claims Respondent has not taken into consideration the property's location on a "paper" street, Respondent has nonetheless applied a 50% negative influence factor. *James testimony; Resp't Ex. 1.*
- b. Respondent contends that, while Petitioner has submitted nothing, the county has submitted data from valid arm's-length transactions rather than fictitious sales, made-up sales, foreclosure sales, or commissioner sales. Respondent contends that the data from those arm's-length transactions demonstrate that the \$4,000 assessed value is consistent with the market. *James testimony; Metz testimony; Resp't Ex. 3.*

## ANALYSIS

16. Petitioner failed to make a prima facie case for a reduction in the assessed value. The Board reached this decision for the following reasons:
- a. Indiana assesses real property on the basis of its true tax value, which the Department of Local Government Finance (“DLGF”) has defined as the property’s market value-in-use. Ind. Code § 6-1.1-31-6(c); 2011 REAL PROPERTY ASSESSMENT MANUAL at 2 (incorporated by reference at 50 IAC 2.4-1-2). To show a property’s market value-in-use, a party may offer evidence that is consistent with the DLGF’s definition of true tax value. A market value-in-use appraisal prepared according to the Uniform Standards of Professional Appraisal Practice often will be probative. *Kooshtard Property VI v. White River Township Assessor*, 836 N.E.2d 501, 506 (Ind. Tax Ct. 2005). Parties may also offer evidence of actual construction costs, sales information for the property under appeal, sale or assessment information for comparable properties, and any other information compiled according to generally acceptable appraisal principles. *See Id; see also*, I.C. § 6-1.1-15-18 (allowing parties to offer evidence of comparable properties’ assessments to determine an appealed property’s market value-in-use).
  - b. Regardless of the method used to prove true tax value, a party must explain how its evidence relates to the market value-in-use as of the relevant valuation date. *O’Donnell v. Dep’t of Local Gov’t Fin.*, 854 N.E.2d 90, 95 (Ind. Tax Ct. 2006); *see also Long v. Wayne Township Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). The valuation date for the assessment at issue in this appeal was March 1, 2013. Ind. Code § 6-1.1-4-4.5(f); 50 IAC 27-5-2 (c).
  - c. Petitioner contends the property should be assessed at \$1,700 based on a \$5,000 per acre value. Petitioner presented no support for selecting \$5,000 per acre as an appropriate basis for his calculation, nor did he adequately walk the Board through that calculation. Statements that are unsupported by probative evidence are conclusory and of no value to the Board in making its determination. *Whitley Products, Inc. v. State Bd. of Tax Comm’rs*, 70 N.E.2d 1113, 1118 (Ind. Tax Ct. 198).
  - d. Petitioner failed to make a prima facie case for changing the assessment. Where petitioner has not supported its claim with probative evidence, the respondent’s duty to support the assessment with substantial evidence is not triggered. *Lacy Diversified Indus. v. Dep’t of Local Gov’t Fin.*, 799 N.E.2d 1215, 1221-1222 (Ind. Tax Ct. 2003).

## CONCLUSION

17. Petitioner failed to establish a prima facie case that the 2013 assessed value was incorrect. Consequently, the Board finds for Respondent.

**FINAL DETERMINATION**

In accordance with the above findings of fact and conclusions of law, the Board determines the 2013 assessed value should not be changed.

ISSUED: October 4, 2017

---

Chairman, Indiana Board of Tax Review

---

Commissioner, Indiana Board of Tax Review

---

Commissioner, Indiana Board of Tax Review

**- APPEAL RIGHTS -**

You may petition for judicial review of this final determination under the provisions of Indiana Code § 6-1.1-15-5 and the Indiana Tax Court's rules. To initiate a proceeding for judicial review you must take the action required not later than forty-five (45) days after the date of this notice. The Indiana Code is available on the Internet at <<http://www.in.gov/legislative/ic/code>>. The Indiana Tax Court's rules are available at <<http://www.in.gov/judiciary/rules/tax/index.html>>.